

Initial assessment and conclusion by the Norwegian NCP on the complaint from the Climate Network and Concerned Scientists Norway against Statoil

Summary

The complaint is directed towards the serious challenges presented by greenhouse gas emissions and climate change. The risks associated with major emissions and the cumulative environmental consequences from the oil sands industry are significant.

However, in this Specific Instance the complaint is directed more towards the policy of Canada to allow the development of oil sands rather than at the manner in which Statoil acts within the framework of this policy. The complaint does not concern whether Statoil, in its activities, is in breach of international instruments or national regulations which are covered by the OECD Guidelines (hereafter the Guidelines). For the NCP to accept the complaint, it would have to specify the manners in which the company has allegedly violated the Guidelines and to substantiate their claim with facts. The complaint should be directed toward the practices of the enterprise rather than at the nature of the business sector and national authorities.

The Norwegian NCP thus rejects the complaint on the basis that it does not meet the criteria specified in the OECD Procedural Guidelines, nor does it clearly fall within the scope of the Guidelines.

The NCP has offered its good offices by holding a meeting with the complainant in August 2011 and by offering the complainant the opportunity to further detail the complaint in December 2011. The complainant did not wish to heed this request.¹

The complaint

The NCP received a complaint against the Norwegian enterprise Statoil ASA on 28 November 2011. The Norwegian Climate Network and Concerned Scientists Norway submitted the complaint. The complainants allege that Statoil's oil production in the oil sand fields of Alberta, Canada is in breach of the Guidelines as set out in Chapter VI, first paragraph, on the Environment:

“Enterprises should, within the framework of laws, regulations and administrative practices in the countries in which they operate, and in consideration of relevant international agreements, principles, objectives, and standards, take due account of the need to protect the environment, public health and safety, and generally to conduct their activities in a manner contributing to the wider goal of sustainable development.”

The Norwegian Climate Network and Concerned Scientists Norway claim that Statoil did not consider relevant international agreements (Kyoto Protocol) when the company began its involvement in the oil sands industry in Canada. The complainants claim that Statoil's investments have

¹ Inter alia meeting telephone conversations December 2011 and e-mail exchange 15 December 2011 (complainant Melli/OECD NCP Secretariat). In these contacts the Secretariat informed that, based on experience with the NCP complaint process, complaints that were specific and relating to the design of the project are more likely to be accepted at the Initial Assessment. Examples of such specific and substantiated complaints, available on www.responsiblebusiness.no, were shared with the complainants in August 2011.

contributed to the Canadian violation of international agreements between 2008 and 2012 by increasing rather than reducing undisclosed climate gas emissions. They assert that this, in turn, undermines international efforts to limit global warming to a 2°C increase above pre-industrial levels. They claim that Canada's oil sands must be unexploited if the world is to have a chance of stabilising the climate and limiting global warming to the internationally accepted limit. They contend that Statoil, a state-owned company², has a particular responsibility to withdraw from extractions that undermine other Norwegian climate obligations. The complainants argue for the withdrawal of the company from all oil sands production in Canada based on its incompatibility with the sustainability provisions of the Guidelines.

STATOIL ASA'S response to the complaint

In response to the Norwegian NCP relating to the complaint dated 28 November 2011 and revised 16 January 2012, the company confirms its activities in Canada. Statoil ASA writes that the NCP is not mandated to assess whether countries like Canada honour their legal obligations nationally or internationally, but is tasked to assess whether the OECD Guidelines are respected. Furthermore, Statoil ASA contends that the complaint places a one-dimensional focus on Statoil ASA and the oil sands industry in Canada, and disregards CO₂-emissions from other companies in the same industry and from other sectors. The complaint does not sufficiently concern Statoil ASA's activity, but rather Canada's total GHG-emissions and alleged breach of international agreements, such as the Kyoto Protocol. Finally, it claims that the Canadian NCP is closer to the underlying facts relating to the complaint, and as such would be the right NCP to lead the examination of the complaint.

Context

In June of 2007, Statoil ASA entered the Canadian oil sands industry with the purchase of the North American Oil Sands Corporation ("NAOSC"), and subsequently obtained a licence for an oil sands project to produce 80,000 barrels of oil per day (the Kai Kos Dehseh project). The objective of the project is to operate and continue to develop a steam-assisted gravity drainage ("SAGD") bitumen recovery operation near Conklin, Alberta. Statoil is one of many firms extracting oil from Canadian oil sands. The purchase has given the company access to the oil sands region that spreads over 1100 km² as well as forest areas in the Athabasca region of Alberta.³

² Sixty-seven per cent of Statoil ASA's shares are held by the Norwegian government.

³ Statoil Canada Ltd. ("Statoil") is an Alberta corporation. It is a wholly owned subsidiary of Statoil ASA. On 22 November 2010, PTTEP Netherland Holding Limited or PTTEP NL (a subsidiary of PTTEP which is a Thai national petroleum company) formed a partnership with Statoil Canada Ltd. and Statoil Canada Holdings Corp. (the subsidiaries of Statoil ASA or Statoil) to acquire a 40% interest in the Kai Kos Dehseh Oil Sands Project (KKD) in Canada for US\$ 2,280 million. Statoil holds a 60% interest in SCP and retains the operatorship of KKD. KKD is a significant oil sands deposit in Canada covering an area of 257,200 acres with an estimated 4.3 billion barrels of recoverable Bitumen resources (independently assessed by a leading external petroleum consultant). KKD is an IN-SITU (under surface) oil sands project utilizing Steam Assisted Gravity Drainage (SAGD) technology, well established and proven production technique, with an expected project life of over 40 years. KKD is located in Athabasca, Alberta in western Canada, and its attractive acreage position is surrounded by approximately 11 other commercial SAGD projects. KKD has 5 core areas, namely Leismer, Corner, Thornbury, Hangingstone, and South Leismer. In early 2011, the Leismer Project will have an initial production at 18,800 barrels per day (gross) over the next two years. Given the large bitumen resources, a staged development program is envisaged, which could ultimately bring production levels to over 300,000 barrels per day (gross) from the 5 areas. A second project in the region, known as Corner, is scheduled to start up in 2015 or 2016 and produce 60,000 barrels a day.

For background on oil sands extraction in Alberta (Canada) and green house gas emissions, reference is made to Box 1.

The Norwegian NCP's assessment

In accordance with the Guidelines and the Norwegian NCP Procedural Guidelines, the NCP rejects to handle the complaint on the following basis:

- Is the Norwegian NCP the right entity to assess the alleged violation?

The Norwegian NCP was designated on 8 January 2012 by the OECD Secretariat as the correct entity to assess the complaint after consultations with the Canadian NCP. The Canadian NCP is to be kept informed throughout the process. The Norwegian NCP received the complaint from two Norwegian NGOs. The complaint concerns bitumen extraction and processing in Canada, but primarily seeks to change policies of a Norwegian-registered multinational enterprise group. The Norwegian NCP is the lead to facilitate communication between the company headquarters and the NGOs, all of which are based in Norway. The Canadian NCP takes a supportive role and will facilitate access to factual information relating to the operation in Canada.

The compliance body of the Kyoto Protocol would be the correct entity to assess a failure to fulfil national commitments by an entity party to the Protocol.⁴

⁴ On December 15, 2011, Canada, according to Article 27 of the Kyoto Protocol, applied to withdraw from the Kyoto Protocol to the United Nations Framework Convention on Climate Change by notifying the United Nations Secretary-General of its decision. Effective December 15, 2012, Canada will cease to be a Party to the Kyoto Protocol. The Canadian notification to the UN Secretary General is found here: http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-7-a&chapter=27&lang=en

- What is the interest of the complainants in the matter at hand?

The interest of the Norwegian Climate Network and Concerned Scientists Norway is a shared concern that humankind, especially future generations, will suffer, and biological diversity will be greatly reduced due to the consequences of climate change. The NGOs aim for a Norwegian climate and energy policy that is coherent with the gravity and extent of the climate crisis, as described by the Intergovernmental Panel on Climate Change (IPCC). They argue that the extraction of oil sands is incompatible with international efforts to limit global warming to an average increase of 2°C above pre-industrial levels. The complainants have as a stated interest that the company concerned should withdraw from the oil sands.

- Is the complaint material and substantiated?⁵

The complaint is substantiated by references to the International Panel on Climate Change (IPCC) and reports from research institutions including the Pembina Institute, Columbia University, and the Potsdam Institute for Climate Impact Research. The complaint also makes reference to the Kyoto Protocol. The environment chapter of the Guidelines does not mention the Kyoto Protocol, but refers to the Rio Declaration on Environment and Development, the Aarhus Convention and the ISO Standard on Environmental Management Systems. The complaint would need to focus on a particular breach of the Guidelines linked to the specific company in order to fall within the mandate of the OECD National Contact Point (NCP). The claim should be substantiated with more specific information regarding the manner in which this particular company has allegedly violated the Guidelines. Hence, this complaint is not sufficiently material and substantiated.

- Is there a link between the enterprise's activities and the issue raised in the specific instance?

The complainant alleges a link between the enterprise's activities and Canada's level of emissions in relation to its Kyoto Protocol target. However, it is the responsibility of governments to fulfil their commitments under the Kyoto Protocol and ensure that companies within their territories contribute to this end. The complainants do not show on what basis it is the responsibility of Statoil to ensure that Canada meets its targets, nor how the company in question specifically has contributed to Canada's level of emissions compared to their commitment to the Kyoto protocol.⁶ It is not made clear why this particular company, rather than other companies or the local authorities, should bear the responsibility of cumulative GHG emissions from the entire oil sands industry.⁷

- How have similar issues been or are being treated in other domestic or international proceedings?

⁵ According to the Norwegian NCP Procedural Guidelines, materiality is understood as a fact that is significant to the issue at hand. Substantiation concerns the extent to which the complaint is supported by proof or evidence.

⁶ The Kyoto protocol does not prescribe which specific measures a Party must take to meet its target, and it is also permitted under certain conditions to increase pollution domestically if quotas are bought internationally.

⁷ The company claims to be operating in compliance with laws and regulations, and also to be in compliance with the Kyoto targets by buying quotas through the European Allowance (EUA) and Certified Emission Reduction (CER) at the stock exchange as well as through participation in CDM (Clean Development Mechanisms), Joint Implementation Projects and the Carbon Disclosure Project.

*There are no court cases or decisions that, on the basis of parallel proceedings, rule out OECD NCP involvement in this case.*⁸

*Other OECD NCPs have rejected complaints similar to the one at hand. For instance, the German NCP has rejected two complaints related to a company's obligations to implement policies aligned with the 2°C limit as the complaints were not sufficiently substantiated, fell outside the scope of the Guidelines, and would not contribute to the purpose of the Guidelines.*⁹

*Canada has been under both national and international pressure for not reducing its greenhouse gas emissions in accordance with its Kyoto Protocol target. However, the compliance mechanism for the Protocol would be the correct entity to address Canada's obligations under the Kyoto Protocol.*¹⁰

- Would the consideration of the specific instance contribute to the purpose and effectiveness of the Guidelines?

It is not clear that considering the specific instance would contribute to the purpose and effectiveness of the Guidelines. The complaint has been filed against a company, but ultimately aims to influence Norwegian and Canadian policies. The complaint is based on principled opposition against oil sands extraction as such, whereas the purpose of the Guidelines is to strengthen the basis of mutual confidence between enterprises and the societies in which they operate, to improve the foreign investment climate, and to enhance the contribution to sustainable development made by multinational enterprises.

The Guidelines do not address whether certain business sectors are acceptable but rather provide general guidance for company practice. Engaging in business that violates international conventions, such as in the production of illegal weapons; would be incongruent with the Guidelines. Oil extraction does not inherently qualify as incongruent.

The challenge of climate change is daunting, and the risks of major emissions and cumulative environmental consequences from the oil sands industry are significant. However, in this Specific Instance the complaint is aimed more at the policy of Canada to allow the development of oil sands rather than at the manner in which Statoil acts within the framework of this policy. The complaint

⁸ http://news-p.bna.com/ieln/display/alpha.adp?mode=topics&letter=E&frag_id=23313499&item=61438C8D2463D6DD334A1D4B8E7B03FF&prod=ieln

[http://www.statoil.com/no/NewsAndMedia/News/2011/Downloads/Court%20Order%20-%20Final%20\(unsigned\)%20with%20attachments.pdf](http://www.statoil.com/no/NewsAndMedia/News/2011/Downloads/Court%20Order%20-%20Final%20(unsigned)%20with%20attachments.pdf).

⁹ German NCP 15 March 2010: Greenpeace vs. Vattenfall Europe AG, Vattenfall Europe Generation AG & Co. KG and Kernkraftwerk Krümmel GmbH & Co.HG and 20 November 2007: Germanwatch vs. Volkswagen.

¹⁰ In 2008, the Kyoto enforcement branch examined Canada's compliance: http://unfccc.int/files/kyoto_protocol/compliance/enforcement_branch/application/pdf/cc-2008-1-6_canada_eb_decision_not_to_proceed_further.pdf. Other UN documents include Canada's annual report to the UNFCCC for 2010: FCCC/ARR/2010/CAN: <http://unfccc.int/resource/docs/2011/arr/can.pdf>, and the decision of the Facilitative branch mandated by the Compliance Committee under section IV, paragraph 6 (a) to promote compliance and provide for early warning of potential non-compliance (CC/FB/11/2012/1 18 January 2012): http://unfccc.int/kyoto_protocol/compliance/items/2875.php

does not concern whether Statoil, in its activity, is in breach of international instruments or national regulations which are covered by the OECD Guidelines. The complaint would need to focus on breach of the Guidelines linked to the specific company to fall within the mandate of the NCP.

On this basis, the NCP finds that handling this specific instance would not contribute to the purpose and effectiveness of the Guidelines. The NCP finds that the specific instance could contribute to the purpose and effectiveness of the Guidelines by making reference to specific company violations of detailed portions of the Guidelines rather than basing the complaint on opposition to a sector at large.

Box 1. Background on oil sands extraction in Alberta and greenhouse gas emissions

The Canadian oil sands are a major contributor to the world's energy supply¹ and contribute to greenhouse gas emissions.² Producing liquid fuels from oil sands requires energy for steam injection and refining. This process generates larger amounts of greenhouse gases per barrel of final product compared to the "production" of conventional oil.³

The OECD expects companies to address climate change as part of business practice.⁴ In 2007 the Province of Alberta regulated GHG emissions from large industrial facilities, including oil sands operations. Under Alberta's Specified Gas Emitters Regulation, all large emitters were required to reduce the carbon intensity of their energy production by 12%. Those unable to make physical reductions were given the option of a \$15/tonne compliance payment into a clean energy technology fund or the purchase of an offset in a closely regulated market.⁵

¹ Of the 2.8 million barrels per day of oil Canada produced in 2010, about 1.5 million barrels per day came from the oil sands according to the Canadian Association of Petroleum Producers (CAPP): <http://www.capp.ca/getdoc.aspx?DocId=190838>

² Natural Resources Canada informs that the oil sands contributed about 6.5 percent of Canada's total GHG emissions in 2009, which is equal to 0.1 percent of global emissions. See also Environment Canada (2011), National Inventory Report 1990-2009 and the IHS CERA Energy Dialogue: Canadian Oil Sands Special Report: Oil Sands, Greenhouse Gases, and European Oil Supply: Getting the Numbers Right, April 2011.

³ EU commissioned report from Stanford University Department of Energy Resources Engineering: https://circabc.europa.eu/d/d/workspace/SpacesStore/db806977-6418-44db-a464-20267139b34d/Brandt_Oil_Sands_GHG_Final.pdf See also Statoil: <http://www.statoil.com/no/environmentsociety/environment/climate/pages/globalwarmingmitigation.aspx> and Joseph J. Romm (2008). Hell and High Water: The Global Warming Solution. New York: Harper Perennial. pp. 181–82. ISBN 9780061172137.

⁴ Transition to a Low-carbon Economy. Public Goals and Corporate Practices: <http://www.oecd.org/daf/internationalinvestment/investmentfordevelopment/transitiontoalow-carboneconomy.htm>

⁵ According to Canadian authorities (e-mail 31.02.2012) this system of paying instead of reducing emissions has to date resulted in a technology fund dedicated to the development and deployment of GHG reducing technologies that is currently worth \$257 million, and which continues to grow. Alberta estimates that this system has resulted in nearly 24 million tonnes of avoided GHG emissions since it began operating.

Canada is politically stable and internationally recognized for its business reliability⁶ and high technical standard.

The oil sands are regulated by the Province of Alberta—with regulatory authority over resources, environment, First Nations consultation (related to resource development), and surface disturbance. The Canadian federal government has jurisdiction over, and primary regulatory responsibilities for, among others, fish and fish habitat, changes to the navigation of waterways, and migratory birds and endangered species.

Enforcement and monitoring is undertaken by the Energy Resources Conservation Board, as well as Alberta Environment and Water. These departments rely on the industry's self-reporting of emissions, production, and activity related to water usage. The province audits those figures and mounts periodic inspections. Non-compliance is addressed.⁷

The Government of Alberta provides an oil sands information portal, designed to provide real-time information on water usage and air quality monitoring, and other regulatory information on a site-specific basis, including greenhouse gas emissions, and land disturbance and reclamation.⁸

During the course of 2010-11, a series of reports pointed to the health and environmental impacts of oil sand production. For example, the Royal Society of Canada Expert Panel released a 2010 report concerning the health and environmental impacts of oil sands and bitumen production.⁹ Major findings in the report included:

- Land reclamation is achievable but is not keeping pace with land disturbance, and current practices for obtaining financial security for reclamation liability may be improved.
- While there is no evidence that oil sands development is impacting the health of residents downstream, more monitoring is required to address concerns from First Nation and other communities.
- It is important that the joint Department of Fisheries and Oceans-Alberta Environment Water Management Framework¹⁰ is implemented and enforced.
- Current evidence does not show the oil sands to be a major threat to water quality; however, there are valid concerns about the current monitoring regime, and the long term and cumulative regional effects on groundwater need more assessment, research, and monitoring.
- Technologies for improved tailings management are emerging but have not prevented a growing inventory of tailings ponds.¹¹ Reclamation and management options for tailings ponds close to wetlands

⁶ See for example Economist Country Reports: <http://www.economist.com/topics/economist-intelligence-unit>, Transparency International Corruption Index: <http://cpi.transparency.org/cpi2011/results/>, UN Human Development Index: <http://hdr.undp.org/en/data/map/>

⁷ On October 2011, for example, Statoil was fined \$190,000 for contravening the terms of its water license between December 15, 2008 and May 29, 2009. Statoil pled guilty to the charges. Statoil has fully disclosed information about the case: [http://www.statoil.com/no/NewsAndMedia/News/2011/Downloads/Court%20Order%20-%20Final%20\(unsigned\)%20with%20attachments.pdf](http://www.statoil.com/no/NewsAndMedia/News/2011/Downloads/Court%20Order%20-%20Final%20(unsigned)%20with%20attachments.pdf). The penalty consisted of a CDN\$5,000 fine and a sentencing order in the amount of CDN\$185,000 to be put towards the creation of an online training portal to communicate best practices for surface water diversion to the oil and gas industry in Alberta. The fine and the funds for the sentencing order were paid on 17 November 2011.

⁸ <http://osip.alberta.ca>

⁹ Report by the Royal Society of Canada Expert Panel: Environmental and Health Impacts of Canada's Oil Sands Industry (December 2010)

¹⁰ <http://environment.alberta.ca/01229.html>. The Canadian government informs that the water use demands do not threaten the Athabasca River per se.

need to be improved.

- Overall, oil sands development has had a minimal impact on ambient air quality; however, concerns about contaminants and acidification in the region are valid.¹²
- Progress has been made by the oil sands industry in reducing direct GHG emissions per barrel of bitumen produced. However, GHG emissions from growing bitumen production create a major challenge for Canada to meet its international commitments to overall GHG emission reduction that current technology options do not resolve.

On February 3, 2012, Canada and the province of Alberta announced the *Joint Canada-Alberta Implementation Plan for Oil Sands Monitoring*, which the Canadian government maintains will provide high-quality, scientifically-rigorous data on the region's water, air, and biodiversity.

Box 2. Details of the Norwegian NCP process in this specific instance

The complaint was received on 28 November 2011. NCP Norway notified the company about the complaint on 28 December 2011 and invited the company to comment on the complaint by 16 January 2012. NCP Norway sent updated procedural guidelines to the company on 12 December 2011.

¹¹ In 2010 Syncrude Canada Ltd. was convicted of charges and fined C\$3 million related to the deaths of 1,600 ducks in a toxic tailings pond from oil sands operations.

¹² Some experts argue that public reporting should in a clearer way include how many metric tonnes CO₂ is emitted pr. barrel bitumen pr. year. Such reporting should be done by each company relating to the individual project site in a manner that communicates easily to the public the cumulative effects of several companies operating in one area.

Box 3. Details of the parties involved

The company: STATOIL ASA

Statoil is an international energy company with operations in 36 countries. Statoil is headquartered in Norway with 20,000 employees worldwide, and listed on the New York and Oslo stock exchanges. Oil sands represent a long-term investment for the company. In 2007, Statoil acquired 100% of the shares in North American Oil Sands Corporation (NAOSC) and operatorship of the Kai Kos Dehseh leases. The company owns interests in 1,129 square kilometres (279,053 net acres) of the oil sands' leases located in the Athabasca region of Alberta¹.

The complainant: the Norwegian Climate Network and Concerned Scientists Norway

The Norwegian Climate Network is a network established to promote a coherent Norwegian climate and energy policy in line with the gravity and extent of the climate crisis, as described by the Intergovernmental Panel on Climate Change (IPCC). *Concerned Scientists Norway (CSN)* is a multi-disciplinary network of scientists concerned about the lack of implementation of sustainable development policies, especially in the light of climate change. CSN is committed inter alia to contributing to an explanation of why human influence on nature increases despite scientific based warnings and numerous attempts to mitigate changes; to communicate research-based evidence about the consequences and risks of today's development; and to seek to influence governments and other decision-makers to implement necessary measures.

Box 4. GENERAL INFORMATION ABOUT THE NORWEGIAN NCP

Application of the OECD Guidelines for Multinational Enterprises

The updated OECD Guidelines for Responsible Business Conduct were adopted at the ministerial level on 25 May 2011. The complaint was submitted after 1 September 2011, when the new version of the Guidelines entered into force for the Norwegian NCP.

The Guidelines comprise a set of voluntary principles and standards for responsible business conduct in various areas including disclosure, employment and industrial relations, environment, combating bribery, consumer interests, science and technology, competition, and taxation.

The Guidelines are not legally binding. However, OECD governments and a number of non-OECD members are committed to encouraging multinational enterprises operating in or from their territories to observe the Guidelines, while taking into account the particular circumstances of each host country.

The Guidelines are implemented in adhering countries by National Contact Points (NCPs), which are charged with raising awareness of the Guidelines amongst businesses and civil society. NCPs are also responsible for handling complaints that the Guidelines have been breached by multinational enterprises operating in or from their territories.

The Norwegian NCP complaint procedure

The Norwegian NCP complaint process is broadly divided into the following key stages:

1) **Initial assessment** – This consists of a desk-based analysis of the complaint, the company's response, and any additional information provided by the parties. The Norwegian NCP uses this information to decide whether further consideration of a complaint is warranted;

¹ <http://www.statoil.com/en/about/worldwide/northamerica/canada/Pages/default.aspx>

2) **Conciliation/mediation OR examination** – If a case is accepted, the Norwegian NCP offers conciliation/mediation to both parties with the aim of reaching a settlement agreeable to both. Should conciliation/mediation fail to achieve a resolution or should the parties decline the offer, the Norwegian NCP will examine the complaint in order to assess whether it is justified. Fact finding or other services to support the processing of the case may be commissioned by the NCP if deemed necessary by the NCP;

3) **Final statement** – If a mediated settlement has been reached, the Norwegian NCP will publish a final statement with details of the agreement. If conciliation/mediation is refused or fails to achieve an agreement, the Norwegian NCP will examine the complaint and prepare and publish a final statement on whether or not the Guidelines have been breached and, if appropriate, recommendations to the company for future conduct.

The complaint procedures, together with the Norwegian NCP's initial assessments, final statements, and follow-up statements, are published on the Norwegian NCP's website: www.responsiblebusiness.no.